

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X

NEIL BLUTIG and MANASH GJELLI, individually
and in the right and on behalf of NRK 66, LLC,

Plaintiffs,

**VERIFIED ANSWER
AND COUNTERCLAIMS**

-against-

Index No. 032111/2015

CHRISTOPHER KRASNIQI, and NRK 66, LLC,

Defendants.

-----X

Defendants, CHRISTOPHER KRASNIQI and NRK 66, LLC, by their attorney, DANIEL E. BERTOLINO, P.C., as and for their Answer to the Verified Complaint, set forth and allege as follows:

1. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations of the Complaint set forth at Paragraphs "1", "2", "15", "16", "22", "30", "36", "37", "40", "41", "42", "60", "64", "69", "70", "71", "72", "73", "74", "76", "79", and "80" thereof.
2. Defendants admit the allegations of the Complaint set forth at Paragraphs "3", "4", "11", "12", "13", "14", and "44" thereof.
3. Defendants admit the allegations of the Complaint set forth at Paragraphs "5", "6", "7", "8", "9", and "10" thereof, to the extent of the existence of a writing, and Defendants respectfully refer the Court's attention to those documents for the terms and legal import thereof.
4. Defendants deny each and every allegation of the Complaint set forth at Paragraphs "17", "18", "19", "20", "21", "23", "24", "25", "26", "27", "28", "29", "31", "32",

“33”, “34”, “35”, “38”, “39”, “45”, “46”, “47”, “48”, “50”, “51”, “53”, “54”, “56”, “57”, “59”, “61”, “63”, “65”, “66”, “68”, and “77” thereof.

5. Defendants repeat, reallege and reiterate each and every admission, denial and denial of knowledge sufficient to form a belief as to the truth of the allegations of the Complaint, with regard to Paragraphs “43”, “49”, “52”, “55”, “58”, “62”, “67”, “75”, and “78” thereof.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

6. Upon information and belief, the Court lacks jurisdiction over the person of the Defendant Christopher Krasniqi by virtue of the improper service of process upon him.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

7. Upon information and belief, the Court lacks jurisdiction over the person of the Defendant NRK 66, LLC by virtue of the improper service of process upon it.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

8. Plaintiffs do not have standing to litigate this claim as presented herein.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

9. The allegations and alleged damages suffered by the Plaintiffs are fictitious and fraudulent and are known by Plaintiffs to be such.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

10. Plaintiffs should be estopped from prosecuting this equity action by virtue of the doctrine of unclean hands.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

11. Plaintiffs’ action should be dismissed on the ground that the same cannot

be maintained because those claims are barred by the Statute of Frauds.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

12. The Complaint should be dismissed upon the equitable doctrine of laches.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

13. This lawsuit is violative of the State of New York's Laws and Rules concerning frivolous actions. As a result thereof, the Defendants are entitled to recover their costs, expenses, legal fees, investigation fees, and the imposition of monetary sanctions.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

14. The Complaint fails to state facts sufficient to entitle Plaintiffs to an award of punitive damages.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

15. Plaintiffs' action should be barred by the equitable doctrine of estoppel.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

16. The Plaintiffs acted in bad faith.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

17. The Complaint should be dismissed on the grounds of Plaintiffs' culpable conduct.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

18. Plaintiffs have breached the implied obligation of good faith.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

19. Plaintiffs have breached the implied obligation of fair dealing.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

20. Plaintiffs' Complaint fails to state a cause of action upon which relief may be granted.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

21. The Complaint is defective in that it does not set forth the allegations in individually numbered paragraphs, as required by CPLR § 3014 and RPAPL which require numbered paragraphs and which limit each numbered paragraph to one allegation.

**AS AND FOR A FIRST COUNTERCLAIM
(Breach of Contract)**

22. In or about August 14, 2014, the parties signed a Second Amendment to Revised and Restated Operating Agreement of NRK 66, LLC, which sets forth the membership and management rights equally among Defendant Christopher Krasniqi, and Plaintiffs Neil Blutig and Manash Gjeli, and which constitutes a binding corporate agreement.

23. The agreement included, among other things, that the parties would manage and operate Karma, a bar/restaurant located at 100 Main Street, Nyack, New York.

24. The Defendants performed all of the conditions and obligations pursuant to the agreement.

25. The Plaintiffs have failed to uphold their obligations under the agreement and have engaged in and continue to engage in conduct which constitutes a material breach of the agreement, and which includes, but is not limited to, the following:

(a) During the period of August 21, 2014 through January 6, 2015, there is an unaccounted sum of \$128,000.00 in cash which was in the control and possession of Plaintiffs and/or their representatives, which was never deposited into Karma's operating

account, and there is no record of its disbursement.

(b) During the period of December 24, 2014 through January 5, 2015, there is an unaccounted sum of \$17,000.00 in cash which was in the control and possession of Plaintiffs and/or their representatives, which was never deposited into Karma's operating account, and there is no record of its disbursement.

(c) The Plaintiffs have failed and refused to add Gjieli to the liquor license, which is a fraud upon the State Liquor Authority and a crime.

(d) The Plaintiffs used company assets to make additional payments toward the promissory note which the company had no obligation to do, which in turn deprived the general manager and operating owner of their salaries for more than fourteen (14) weeks.

(e) The Plaintiff Gjieli brings empty bottles of Remy Martin and Hennessy from his home, and refills them from Karma's bar, which constitutes the crime of Grand Larceny.

(f) The Plaintiffs filed a false insurance claim with Karma's insurance carrier, which included items not damaged during an incident at the bar, which is a fraud upon the insurance company and a felony.

(g) The Plaintiffs have failed and refused to pay several of the company employees "on the books", and they continue to pay them salaries in cash, which is a crime.

(h) The Plaintiffs are employing six undocumented illegal immigrants, and paying them salaries in cash, which is a crime.

(i) his age, so that he can illegally collect Social Security, and other benefits that he would not otherwise be entitled to.

(j) Upon information and belief, the Plaintiff Gjieli is perpetrating a fraud by lying about his actual address, since he uses numerous different addresses.

(k) The Plaintiffs have failed and refused to declare cash in excess of \$120,000.00 on the quarterly sales tax returns in order to avoid paying sales tax, thereby committing a felony.

(l) The Plaintiffs are guilty of illegal, fraudulent and oppressive actions toward the Defendant which include, but are not limited to firing the Defendant's brothers as employees at Karma, and forbidding the Defendant from returning to the business.

(m) The property and assets of NRK 66, LLC d/b/a Karma are being looted, wasted and diverted for non-company use by the Plaintiffs.

(n) The Plaintiffs and/or their representatives refused to approve appropriate business support in connection with the operation of Karma.

(o) The Plaintiffs and/or their representatives engaged in improper conduct with employees, including, but without limitation, intentional infliction of emotional distress; negligent infliction of emotional distress; and harassment.

(p) The Plaintiffs have been and continue to make defamatory statements concerning the Defendant.

(q) The Plaintiffs and/or their representatives engaged in gross nepotism with certain employees, including, but without limitation, unauthorized hiring and promoting of unqualified individuals; unauthorized creation of non-existent positions;

unauthorized granting of salaries and increases; and conspiring to replace personnel without authorization.

(r) The Plaintiffs and/or their representatives engaged in unprofessional behavior which endangered customer relationships, including, but without limitation, publicly second-guessing performance of management; publicly reprimanding employees; engaging in gossip; and engaging in false accusations.

(s) The Plaintiffs have deterred customers from Karma.

(t) The Defendant has been denied knowledge of the company affairs, access to the company records, and participation in the operation and management of Karma.

(u) The Plaintiffs have utilized the assets of Karma for personal expenses.

(v) The Plaintiffs and/or their representatives have stripped Karma of its assets, in that its assets have been wasted and misappropriated for Plaintiffs' personal use.

(w) The Plaintiffs have failed to adhere to the formalities of the company in that they failed to keep adequate records relating to the governance of its affairs and the accounting of its finances.

(x) The Plaintiffs used the company as their alter ego.

(y) Karma has depleted assets and reduced income, solely because the aforesaid actions of the Plaintiffs.

(z) The Plaintiffs perpetrated a fraud upon the Defendant by utilizing the company as the vehicle to commit a fraud and various crimes as aforesaid.

(aa) The Plaintiffs continue to strip the company of its assets, in

anticipation of litigation by the Defendant, and by others.

26. As a direct and proximate result of Plaintiffs' actions in breaching the agreement, the Defendants have been damaged in an amount to be determined by the trier of fact, but believed to be in excess of \$500,000.00.

**AS AND FOR A SECOND COUNTERCLAIM
(Fraudulent Inducement)**

27. Defendants repeat, reiterate and reallege each and every allegation of the Counterclaim set forth at Paragraphs "22" through "26" as if set forth at length herein.

28. Plaintiffs made fraudulent representations with the intent to deceive Defendant in order to induce Defendant to enter into the business.

29. Defendant justifiably and reasonably relied on Plaintiffs' representations concerning the business.

30. At the time they made the representations, Plaintiffs knew them to be false and they made the representations with the intent to deceive, defraud and induce Defendant to enter into business with them.

31. In reliance on those representations, Defendant was induced to become partners with Plaintiffs in the business.

32. Had the Defendant known the true facts, he would not have entered into a partnership with Plaintiffs.

33. Defendant's reliance on Plaintiffs' representations was reasonable and justified as Defendant had no reason to believe or suspect that Plaintiffs would misrepresent or conceal material facts from him.

34. Plaintiffs' misrepresentations were material.

35. As a direct and proximate result of Plaintiffs' misrepresentations, Defendants sustained damages in an amount to be determined by the trier of fact, but believed to be no less than \$500,000.00.

**AS AND FOR A THIRD COUNTERCLAIM
(Negligent Misrepresentation)**

36. Defendants repeat, reiterate and reallege each and every allegation of the Counterclaim set forth at Paragraphs "22" through "35" as if set forth at length herein.

37. Plaintiffs had a duty not to withhold information or mislead Defendants with the information known to them or act in a manner that would cause damage or harm to Defendants, as aforesaid.

38. Plaintiffs made these representations and omissions to Defendants, and Defendants reasonably relied upon these representations and omissions.

39. At the time Plaintiffs made these representations and omissions, Defendants were ignorant of the falsity of the representations and believed them to be true.

40. In reliance on the representations made by Plaintiffs, Defendants entered into business with Plaintiffs.

41. Had the Defendants known the true facts, they would not have entered into business with them.

42. Defendants' reliance on Plaintiffs' representations was reasonable and justified as Defendants had no reason to believe or suspect that Plaintiffs would misrepresent or conceal facts from Defendants.

43. As a direct and proximate result of Plaintiffs' misrepresentations, Defendants sustained damages in an amount to be determined by the trier of fact, but believed

to be no less than \$500,000.00.

**AS AND FOR A FOURTH COUNTERCLAIM
(Breach of Fiduciary Duties)**

44. Defendants repeat, reiterate and reallege each and every allegation of the Counterclaim set forth at Paragraphs "22" through "43" as if set forth at length herein.

45. Upon information and belief, the Plaintiffs, as members of NRK 66, LLC d/b/a Karma, owe the Defendants fiduciary duties of trust, loyalty, good faith, and fair dealing.

46. That the aforementioned actions of the Plaintiffs constitute a breach of their fiduciary duties to Defendants.

47. That the breaches of Plaintiffs' fiduciary duties to Defendants were with their full knowledge and participation and for Plaintiffs' sole benefit.

48. As a result of the aforesaid various breaches of fiduciary duties, Defendants have been damaged in an amount to be determined by the trier of fact, but believed to be not less than \$250,000.00, as well as punitive damages in the sum of \$500,000.00.

**AS AND FOR A FIFTH COUNTERCLAIM
(Breach of Covenant of Good Faith and Fair Dealing)**

49. Defendants repeat, reiterate and reallege each and every allegation of the Counterclaim set forth at Paragraphs "22" through "48" as if set forth at length herein.

50. Every agreement contains an implied covenant of good faith and fair dealing which imposes upon Plaintiffs an obligation not to commit acts which are contrary to the purpose of the business.

51. The actions of Plaintiffs, as set forth above, constitute a breach of the covenant of good faith and fair dealing.

52. That by reason of the foregoing, the Defendants have suffered damages in an amount to be determined by the trier of fact, but to be in excess of \$500,000.00.

**AS AND FOR A SIXTH COUNTERCLAIM
(Conversion and Unjust Enrichment)**

53. Defendants repeat, reiterate and reallege each and every allegation of the Counterclaim set forth at Paragraphs "22" through "52" as if set forth at length herein.

54. The aforesaid withholding and diversion of monies due to Defendants by Plaintiffs, constitutes conversion.

55. Upon information and belief, Plaintiffs received additional payments above and beyond their interest in the company, and have been unjustly enriched at the expense of the Defendants.

56. That by reason of the foregoing, the Defendants have sustained damages, and will continue to sustain damages in an unknown sum believed to be in excess of \$500,000.00.

**AS AND FOR A SEVENTH COUNTERCLAIM
(Derivative Action)**

57. Defendants repeat, reiterate and reallege each and every allegation of the Counterclaim set forth at Paragraphs "22" through "56" as if set forth at length herein.

58. Plaintiffs have withheld and diverted sums of money that are justly due and owing to NRK 66, LLC d/b/a Karma.

59. Defendant is bringing a derivative action on behalf of the company to

procure judgment in its favor.

60. That by reason of the foregoing, the company has sustained damages, and will continue to sustain damages in an unknown sum believed to be in excess of \$500,000.00.

AS AND FOR AN EIGHTH COUNTERCLAIM
(Attorney's Fees)

61. Defendants repeat, reiterate and reallege each and every allegation of the Counterclaim set forth at Paragraphs "22" through "60" as if set forth at length herein.

62. Defendant's litigation efforts in this derivative action will result in a substantial benefit to the company and its members.

63. In equity, Defendant is entitled to reimbursement from the company for their reasonable attorney's fees and costs incurred, in an amount to be determined by this Court.

AS AND FOR A NINTH COUNTERCLAIM
(Accounting)

64. Defendants repeat, reiterate and reallege each and every allegation of the Counterclaim set forth at Paragraphs "22" through "63" as if set forth at length herein.

65. As a result of the fiduciary relationship of loyalty and trust between Plaintiffs and Defendants, Plaintiffs have received certain monies, without accounting to Defendants for the said monies, which constitutes wrongful conduct on Plaintiffs' part.

66. Defendants are entitled to an accounting, and Plaintiffs should be directed to render such an accounting of all of the monies received, obtained or controlled by Plaintiffs, as well as the income, profits and other beneficial interest accruing therefrom.

**AS AND FOR A TENTH COUNTERCLAIM
(Injunctive Relief)**

67. Defendants repeat, reiterate and reallege each and every allegation of the Counterclaim set forth at Paragraphs "22" through "66" as if set forth at length herein.

68. Plaintiffs' improper conduct as detailed above, has caused and continues to cause substantial and irreparable injury to Defendants and the company's business, resulting in loss of customers and revenue.

69. Defendants request immediate, preliminary and permanent injunctive relief, prohibiting, restraining and enjoining the Plaintiffs from (i) diverting funds from the company for their own use in violation of the agreement and their fiduciary duty to Defendant and the company, (ii) selling, transferring or disposing of any of the company's assets and leasehold interest, (iii) concealing company transactions from Defendant, individually and as a member of the company and/or (iv) making any substantial changes to Karma's image and reputation and goodwill, purchases and/or perceived improvements to the premises without the consent of the Defendant, individually and as a member of the company.

70. Defendants have no adequate remedy at law.

**AS AND FOR AN ELEVENTH COUNTERCLAIM
(Ejectment)**

71. Defendants repeat, reiterate and reallege each and every allegation of the Counterclaim set forth at Paragraphs "22" through "70" as if set forth at length herein.

72. Due to the Plaintiffs fraud, misrepresentations, illegal and immoral actions, the Plaintiffs Blutig and Gjeli should be immediately removed from the company.

73. The company is unable to function as, for the reasons set forth herein, the Plaintiffs can longer be trusted.

74. Due to their illegal and immoral actions, the company faces the immediate danger of financial failure and insolvency.

75. It is requested that Neil Blutig and Manash Gjieli be ejected from NRK 66, LLC.

**AS AND FOR A TWELFTH COUNTERCLAIM
(Judicial Dissolution)**

76. Defendants repeat, reiterate and reallege each and every allegation of the Counterclaim set forth at Paragraphs "22" through "75" as if set forth at length herein.

77. Defendants request dissolution of the company pursuant to Limited Liability Company Law § 702 upon the ground that the members in control of the company have been guilty of illegal, fraudulent and oppressive actions toward Defendant; that Defendant, as a member and one-third owner of the LLC, is being locked out and denied access to the books and records of the company; and that the assets of the company are being wasted or diverted for non-company purposes by those in control of the company.

78. By reason of the actions of the Plaintiffs as alleged herein, there is internal dissension, and the members are so divided that dissolution would be beneficial to the company.

79. The Defendants respectfully request that this Court grant the Judicial Dissolution of the company; appoint a Referee to render an accounting and to report to the Court; and for a money judgment in an amount to be determined by the trier of fact.

WHEREFORE, the Defendants demand judgment dismissing the Plaintiffs'

Complaint in its entirety, and judgment on the Counterclaims as follows:

On the First Counterclaim for breach of contract, a money judgment to be determined by the trier of fact, but believed to be in excess of \$500,000.00; and

On the Second Counterclaim for fraudulent inducement, a money judgment to be determined by the trier of fact, but believed to be in excess of \$500,000.00; and

On the Third Counterclaim for negligent misrepresentation, a money judgment to be determined by the trier of fact, but believed to be in excess of \$500,000.00; and

On the Fourth Counterclaim for breach of fiduciary duties, a money judgment to be determined by the trier of fact, but believed to be not less than \$250,000.00, as well as punitive damages in the sum of \$500,000.00; and

On the Fifth Counterclaim for breach of covenant of good faith and fair dealing, a money judgment to be determined by the trier of fact, but believed to be in excess of \$500,000.00; and

On the Sixth Counterclaim for conversion and unjust enrichment, a money judgment in the sum of \$500,000.00; and

On the Seventh Counterclaim for derivative action, a money judgment in the name of NRK 66, LLC d/b/a Karma to be determined by the trier of fact, but believed to be in excess of \$500,000.00; and

On the Eighth Counterclaim, an award of reasonable attorney's fees, costs and disbursements to be reimbursed to Defendant by NRK 66, LLC, in an amount to be determined by the Court; and

On the Ninth Counterclaim, an accounting of all of the monies received,

obtained or controlled by Plaintiffs, as well as the income, profits and other beneficial interest accruing therefrom; and

On the Tenth Counterclaim, restraining and enjoining the Plaintiffs from (i) diverting funds from the company for their own use in violation of the agreement and their fiduciary duty to Defendant and the company, (ii) selling, transferring or disposing of any of the company's assets and leasehold interest, (iii) concealing company transactions from Defendant, individually and as a member of the company, and/or (iv) making any substantial changes to Karma's image and reputation and goodwill, purchases and/or perceived improvements to the premises without consent of the Defendant, individually and as a member of the company; and

On the Eleventh Counterclaim, ejectment of Neil Blutig and Manash Gjieli from NRK 66, LLC; and

On the Twelfth Counterclaim, Judicial Dissolution of the company; the appointment of a Referee to render an accounting and to report to the Court; and for a money judgment in an amount to be determined by the trier of fact; and

On all Counterclaims, a judgment for interest, costs, disbursements, and such other, further and different relief as to the Court may seem just and proper in the premises.

Dated: Upper Nyack, New York
August 6, 2015

DANIEL E. BERTOLINO, P.C.
Attorney for Defendants
407 North Highland Avenue
Upper Nyack, New York 10960
(845) 358-9700

TO: CONDON & ASSOCIATES, PLLC

Attorneys for Plaintiffs
55 Old Turnpike Road, Suite 502
Nanuet, New York 10954

VERIFICATION

STATE OF NEW YORK)

ss.:

COUNTY OF ROCKLAND)

CHRISTOPHER KRASNIQI, being duly sworn, says:

1. I am one of the Defendants herein.

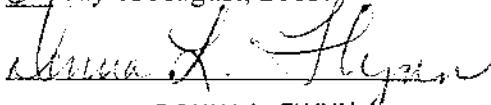
2. I have read the annexed Answer and Counterclaims, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters, I believe them to be true.

3. I affirm that the foregoing statements are true under penalties of perjury.


CHRISTOPHER KRASNIQI

Sworn to before me this

17 day of August, 2015.



DONNA L. FLYNN
Notary Public, State of New York
No. 01FL4858481
Qualified in Rockland County
Commission Expires May 5, 2018